

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JACK THOMAS FORDE,  
DONALD BOWE,  
STEVEN GARRETT,  
GERRY GIANAN,  
CARSON JORDAN,  
CAMERON MITCHELL,  
JOHN ROPP,  
HECTOR SOLIS,  
GREGORY EUGENE WILLIAMS,  
MICHAEL WILLIAMS,  
MUTEE ZINDANI,  
and others similarly situated,

Plaintiffs,

-vs-

Case No: 1:12-cv-03396-TPG

WATERMAN STEAMSHIP CORPORATION,

Defendant.

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**FIFTH AMENDED**  
**CLASS ACTION COMPLAINT UNDER RULE 9(h)**

NOW COME Plaintiffs, on their behalf and other similarly situated persons, complaining against Defendant as follows:

1. Jurisdiction and venue lie in this action, Defendant being subject to service of process within this forum.
2. Subject matter jurisdiction is founded under the general maritime law and the Shipowner's Liability Convention for the unearned wage component of maintenance and cure.

3. At all times material to issues herein, Plaintiffs, and other similarly situated persons, suffered illness or injury in the service of Defendant's vessel(s) on inter-coastal/foreign/high seas voyages and were thereafter paid unearned wages, sans the overtime they otherwise would have earned; moreover, as to those with dependents, unearned wages were not paid until their sickness or incapacity was declared of a permanent character.

4. Plaintiffs, and others similarly situated, are entitled to the overtime and vacation pay component of the unearned wages they otherwise would have earned, and those with dependents, are entitled to unearned wages until their sickness or incapacity was declared of a permanent character, per the Shipowners' Liability Convention.

#### CLASS ACTION ALLEGATIONS

Plaintiffs are entitled to sue as a representative party on behalf of crewmembers who have been paid unearned wages on high seas/inter-coastal/foreign voyages sans the overtime and/or vacation pay they would have earned, and for those with dependents who were not paid unearned wages until their sickness or incapacity was declared of a permanent character, for the following reasons:

5. Joinder of all class members is not practicable because:

A. The class numbering according to Plaintiff's best present estimate is too numerous and/or disperse geographically.

6. The claim of Plaintiff is typical of the claims of the class.

7. Plaintiff will fairly and adequately protect the interests of the class.

8. The prosecution of separate actions by individual members of the class would create a risk of:

- A. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct of Defendant; and
- B. Adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of adjudication or substantially impair or impede their ability to protect their interest.

9. Questions of fact and law common to the members of the class predominate over any questions affecting only individual members, i.e. whether unearned wages on an inter-coastal/foreign voyage payable is inclusive of the overtime the crewmember would have earned.

10. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because it will:

- A. Avoid a multiplicity of actions;
- B. Permit the litigation of small claims otherwise sufficient to support litigation;
- C. Promote judicial economy.

WHEREFORE Plaintiffs and class members pray for Judgment in an amount equal to the overtime wages to which they are entitled to during their period of entitlement to unearned wages on an inter-coastal/foreign voyage, plus interest, costs, attorney fees and any other relief to which they are lawfully entitled in the premises.

O'BRYAN BAUN KARAMANIAN

/s/ Dennis M. O'Bryan

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DATED: December 6, 2013

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on the 6<sup>th</sup> of December, 2013, a copy of the foregoing was forwarded via first class mail with postage fully prepaid thereon to:

Peter A. Junge, Esq.  
250 West 57<sup>th</sup> St., Ste. 2532  
New York, NY 10107

/s/ Dennis M. O'Bryan

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